IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Date of decision: 19.10.2006

State of Punjab Vs. Sheela Devi

CORAM: **Hon'ble Mr. Justice Virender Singh**
Hon'ble Mr. Justice A.N. Jindal

Present: Mr. M.S. Sidhu, Sr. Deputy Advocate General, Punjab, for the appellant.

None for the respondent.

Virender Singh, J.

Respondent Sheela Devi (hereinafter to be referred to as "the accused") and her son Garib Dass (since convicted) were booked in case FIR No.15 dated 30.1.1997, registered at Police Station Sadar, Rajpura (District Patiala), under Sections 302/34/304-B IPC. At the time of alleged incident, accused Sheela Devi was of the age of 80 years. Both the accused were charged under Section 302 read with Section 34 IPC for having committed the murder of Anita Rani wife of Garib Dass. Alternatively, they were also charged under Section 304-B IPC. Vide impugned judgment of learned Sessions Judge, Patiala dated August 9, 1999, both have been acquitted of the charge of Section 302 IPC read with Section 34 IPC. However, Garib Dass stands convicted under Section 304-B IPC and Sheela Devi accused stands acquitted even for the said charge. The sentence awarded to Garib Dass is to undergo rigorous

imprisonment for ten years and a fine of Rs.20,000/-, in default thereof to further undergo R.I. for one year.

According to the latest office report dated 8.10.2006, Garib Dass has not preferred any appeal against his conviction. Mr. Sidhu, the learned Senior Deputy Advocate General also makes a statement at the Bar that the State has also not preferred any appeal against the acquittal of aforesaid Garib Dass for the charge of Section 302 IPC. Nevertheless after the admission of the instant appeal way back in May, 2000, the service of Sheela Devi accused has not been got effected till date and we show our anguish on the laxity shown by the prosecution agency in this regard. But at the same time, we do not intend to detain ourselves any further in adjourning the matter for the same purpose and are disposing of the instant appeal today itself with the assistance rendered by Mr. M.S. Sidhu, the learned State counsel, who has read out the entire evidence once again before us from the trial court record as preparation of the paper-book was exempted by the orders of the Hon'ble Acting Chief Justice in appeals against acquittal. We have also gone through the certain other relevant documents from the trial Court record.

In brief, the case of the prosecution is that Garib Dass, the son of Sheela Devi accused had married to Anita Rani, sister of Gurdev Singh (PW3). It was solemnized on October 27, 1997 i.e. just three months before her death. Gurdev Singh alleges that he and his uncle had gone to the house of in-laws of his sister about 15 days after the marriage and saw that Garib Dass and Sheela Devi accused were beating her. The

accused asked them to take the girl back as Garib Dass was getting matrimonial matches from good families and he had been married into a pauper family. The demand of a motor cycle was made at that time. It is then alleged that Anita Rani was brought back by her brother to village Pawala (Village of the complainant) and after discussing the matter in the family it was decided that a sum of Rs.5000/- would be given to Garib Dass. Consequently, the money was paid to Garib Dass and Anita Rani was sent back. It is then alleged that 20 days thereafter, Anita Rani again came back to village Pawala and said that she would return to her matrimonial home only when a motor cycle was given to her, otherwise her dead-body would go from her in-laws' house. About eight days prior to the present occurrence, Garib Dass was called to village Pawala and in the presence of certain respectables he assured that he would not harass Anita Rani in future. Although, Anita Rani had expressed certain apprehensions but she was persuaded to accompany her husband. It is then alleged that on January 29, 1997, Gurdev Singh received a message from village Chamaru (Village of the accused) that Anita Rani had died whereupon he along with Nand Lal, Raj Kumar, Harbans Lal and certain other persons went to the village and saw that Anita Rani was lying dead on a cot. According to them, it was a case of strangulation. Statement Ex.PE was made by Gurdev Singh before S.I. Sukhdev Singh (PW7) on 30.1.1997 upon which the formal FIR Ex.PE/2 was recorded in the concerned Police Station. Investigation was carried out by aforesaid S.I. Sukhdev Singh who prepared the inquest-report Ex.PC on the dead body

of Anita Rani. Thereafter, postmortem examination was conducted by Dr. I.C. Taneja and two other doctors who noticed the following injuries on her dead-body:-

> "A ligature mark of the size of 30 cm in length and 2.5 cm in width over the whole length except at the two ends. Where it tapers off. The ligature mark was present between thyroid cartilage and chain and was going upwards, backwards and outwards. Left end of ligature mark ends at point 1 cm above and behind the angle of left mandible and right ends of ligature mark crosses the right mastoid process and ends at the corresponding portion of the hair line."

In their opinion, the cause of death was asphyxia due to the hanging which was ante-mortem and was sufficient to cause death in the ordinary course of nature. The time between the injury and death was opined as 24 hours. The uterus was containing a foetus of six to eight weeks.

On February 2, 1997, Sheela Devi accused and her son were formally arrested. A disclosure statement Ex.PH was recorded, pursuant to that she got recovered two pieces of rope under the heap of Toori. The recovered articles were taken into possession vide memo Ex.PJ.

After completion of the investigation, both the accused were challaned and charged as stated above.

The prosecution has examined Dr. I.C. Taneja (PW1) who had conducted the postmortem on the dead-body of the deceased, Constable Malkiat Singh (PW2) who had tendered his affidavit Ex.PD in respect of the delivery of the special report to the concerned Magistrate, Gurdev Singh (PW3) the real brother of the deceased had reiterated all the allegations as alleged in his initial statement, Raj Kumar was (PW4), Draftsman, Paramjit Singh (PW5) proved the scaled plan Ex.PF, Man Singh (PW6) another brother of the deceased had handed over the photographs, list of dowry articles and a certificate from the Sarpanch and S.I. Sukhdev Singh (PW7) was the Investigating Officer.

The plea taken by accused Sheela Devi accused and her son Garib Dass was of false implication. However, the defence of Garib Dass was that Anita Rani had pre-marital love affairs with a boy of village Pawala and she wanted to marry him. Her parents were against her will and without her consent they had married her to him for which she used to remain frustrated and depressed. She used to stay more at her parents' village. They then pleaded that in their absence she committed suicide on account of the said fact and an intimation was given to the parents of Anita Rani. The dead-body was also taken to Rajpura and ultimately he and her mother (respondents herein) were implicated by the complainant side in connivance with the police. However, both the accused had specifically denied the allegation of demand of dowry at any on any count.

No witness was produced by either of the accused in defence.

The learned trial Court after appreciating the evidence has acquitted Sheela Devi accused qua both the charges and convicted and sentenced her son Garib Dass, as stated herein above.

Mr. Sidhu at the very outset, fairly states that it is not a homicidal death and, therefore, Section 302 IPC is not attracted. He contends that this appears to be the reason that State has not preferred any appeal against the acquittal of Garib Dass for the charge of Section 302 IPC. Our attention has also been drawn by Mr. Sidhu to para 18 of the impugned judgment where this aspect is dealt with by the learned trial Court in detail. We concur with the said finding.

Mr. Sidhu, however, submits that Anita Rani had died in her in-laws house within three months of her marriage and there being convincing evidence on record to the effect that Sheela Devi accused, the mother-in-law and her son Garib Dass were harassing and maltreating her on account of more dowry. He then contends that the evidence of the prosecution witnesses especially Gurdev Singh, the first informant, has not been appreciated in the right perspective qua the mother-in-law who too deserved to be convicted along with her son for the charge of Section 304-B IPC. On the basis of the aforesaid submissions, Mr. Sidhu prays that the impugned judgment qua Sheela Devi be set aside and she be convicted for the aforesaid charge.

We are not convinced with the arguments advanced by Mr. Sidhu. No doubt, the learned trial Court has believed Gurdev Singh and Raj Kumar, the main prosecution witnesses, almost on all the aspects with

regard to the dowry demand and on the basis of the said evidence Garib Dass, the son of the present accused has suffered conviction under Section 304-B IPC, but in the given facts and circumstances of the instant case, what we have noticed is that soon before the death of Anita Rani, she was subjected to harassment and cruelty by Garib Dass, the husband only who had put forth a demand of motor cycle for which a sum of Rs.5000/- was initially paid to him and further a request from the side of parents of the deceased was made that they would not be in a position to arrange more money. It has also come in evidence that when Anita Rani had visited her parents' house, then also, she disclosed that she would go back only when a motor cycle is arranged or her parents would see her dead. Therefore, all the allegations, in our view, take Garib Dass only into grip. There cannot be any straight jacket formula to appreciate the words soon before the death as is settled by now. It depends upon the facts of each case. In the case in hand, no doubt the death of Anita Rani has occurred within three months of her marriage, but from evidence on record what we find is that accused Sheela Devi has been ascribed the part of harassing her daughter-in-law along with her son and this was noticed by Gurdev Singh on his first visit within 15 days of the marriage of her sister. We would like to reproduce the relevant portion of his substantive evidence in this regard which reads thus:

> "After about 15 days of marriage, I along with Nand Lal my uncle had gone to village Chamaru. When we reached the house of Garib Dass, Garib Dass and his mother Sheela

> Devi accused were beating my sister Anita Rani. On seeing us, they said that take your girl away. We have been married in a pauper family."

The aforesaid statement of Gurdev Singh, the star witness of the prosecution case is not appealing to us at all and it appears that an attempt has been made by him to implicate Sheela Devi, a lady of 80 years who happened to be the mother-in-law of the deceased. This can be on account of the natural hatred as sister of Gurdev Singh had died an unnatural death within a very short span of her marriage. Otherwise, the entire evidence of harassment and cruelty with regard to dowry demand revolves around a specific demand of a motor cycle that too from Garib Dass, the husband only, who already stands convicted for the charge of Section 304-B IPC.

Even otherwise, the scope of interference by the Appellate Court in the judgment of acquittal is very limited. In a latest judgment of Apex Court rendered in ***Kallu @ Masih and others vs. State of Madhya Pradesh,*** 2006 (1) RCR (Criminal) 427, their Lordships while dealing with the scope of appellate Court in an appeal against acquittal observed as under:-

> "While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court,

> where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of doubt. Further if it decides to interfere, it should again assign reasons for differing with the decision of the trial court."

After re-appreciating the entire case of the prosecution very minutely, especially in the present set of circumstances when there is no assistance from the side of acquitted accused, may be on account of the service being not effected upon her, we are of the considered view that there is no demonstrable perversity, infirmity or unreasonableness in the findings of the learned trial Court on any count warranting our interference qua acquittal of Sheela Devi, the mother-in-law.

Resultantly, finding no merit in the instant appeal filed by State of Punjab, the same is hereby dismissed.

(Virender Singh)
Judge

(A.N. Jindal),
Judge

October 19, 2006
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